

## CENTRAL CALIFORNIA YOKUTS NAGPRA COALITION



May 24, 2017

Received & Inspected

DOCKET FILE COPY ORIGINAL

JUN - 6 2017

FCC Mailroom

Claudia Gonzales  
Tribal Chairperson  
Picayune Rancheria  
8080 N Palm Avenue  
Suite 207  
Fresno, California 93711

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW.,  
Washington DC 20554

### **RE: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (WT Docket No.17-79)**

Leanne Walker-Grant  
Tribal Chairperson  
Table Mountain Rancheria  
23736 Sky Harbour Road  
Friant, California 93626

Dear Secretary Dortch,

Ruben Barrios  
Tribal Chairman  
Santa Rosa Rancheria  
PO Box 8  
Lemoore, California 93245

The four federally recognized Yokuts Tribes of California, Picayune Rancheria of the Chukchansi Indians, Table Mountain Rancheria of California, Santa Rosa Indian Community of the Santa Rosa Rancheria, California and Tule River Indian Tribe of the Tule River Reservation, (Tribes) formed a coalition five years ago to address the rightful return and respectful reburial of our ancestral remains from federally funded institutions as required by the Native American Graves Protection and Repatriation Act (NAGPRA). The Coalition also works cooperatively with federal, state and local agencies through the regulatory process to minimize adverse effects on Yokuts cultural resources, sacred sites, cemeteries and Traditional Cultural Properties.

Neil Peyron  
Chairman  
Tule River Reservation  
PO Box 589  
Porterville, California 93258

The Tribes are providing comment to the Federal Communications Commission (FCC) on the Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI) in the matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (WT Docket No.17-79) published in the Federal Register on May 10, 2017. The Tribes are specifically concerned about effects this proposed rulemaking may have on Section 106 of the National Historic Preservation Act (NHPA), 36 CFR Part 800.

### **Extension of the Comment Period:**

First and foremost, the Tribes request an extension to the 30 day comment period of an additional 120 days. Currently, the deadline for comments is June 9, 2017. Given the breadth and scope of the proposed rule, the limited 30 day deadline is wholly inadequate and detrimental to the tribal consultation process. FCC must

No. of Copies rec'd 0  
List ABCDE

undertake meaningful consultation with Tribes on this NPRM. Our initial observation of the proposed rule finds fault in the 30 day period given the sheer volume, complexity and ambiguity of this NPRM/NOI. Specifically, the proposed rule is broken into 123 separate paragraphs which contain a total of 264 proposed rule changes and/or queries for comment, many of which are ill-defined and contradictory. Paragraph 40, for example, seeks comments from Tribes on protocols currently in place relative to adequate completion of Section 106 in cases where Tribes may be non-responsive to requested consultation, but also seeks comment on whether the FCC can divest itself of its fiduciary responsibilities to the Tribes by allowing applicants to self-certify their compliance with the Section 106 process. It is unclear to the Tribes how these disparate threads are purportedly parallel.

Foremost, the Tribes are deeply concerned by the multitude of ways in which the FCC seeks to further divest itself of its trust responsibilities to Tribes under Section 106 and other federal regulations.

**Existing regulatory requirements:**

Section 106 states that the FCC, as the Agency Official responsible for licensing broadband deployment, is required “to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part.” (36 CFR Part 800 §2(a)).

Additionally, the September 21, 2000 Advisory Council on Historic Preservation (ACHP) Memorandum to the FCC, State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs) (memorandum) states that “applicants, licensees, tower construction companies, and their authorized representatives *may* consult with the State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs) to initiate the Section 106 review process; identify and evaluate historic properties; and assess effects. FCC, however, will remain responsible for participating in the consultation process when” certain criteria are in effect.

The ACHP memorandum further states that “This Memorandum, therefore, is not intended to modify or limit such requirements nor mandate that Indian Tribes consult with licensees and applicants or provide information if the Indian Tribes conclude that consultation should be directly with FCC.”

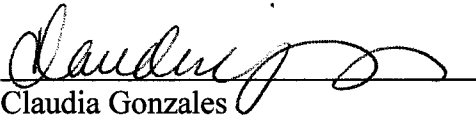
**Request for Action:**

The Tribes believe the NPRM seeks actions that clearly go beyond the scope of rulemaking and/or adding clarity to FCC guidelines relative to the NHPA. The

Tribes assert that the current law is clear as to NHPA requirements for the FCC and the deployment of broadband infrastructure licensed and approved by the FCC. Further, the law is also clear in that the FCC cannot revise statutes through the process of rulemaking. Therefore, the Tribes respectfully request that the FCC extend the deadline for comment an additional 120 days and further, the FCC must undertake consultation with Tribes in a meaningful way, such as through webinars, conference calls and listening sessions on the true scope and impact to existing law of the proposed rulemaking.

Please contact Robert Pennell, Tribal Cultural Resources Director at Table Mountain Rancheria on behalf of the Tribes to schedule group consultation. Mr. Pennell can be reached at (559) 325-0351 or [rpennell@tmr.org](mailto:rpennell@tmr.org).

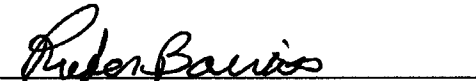
Sincerely,



Claudia Gonzales  
Tribal Chairperson  
Picayune Rancheria



Leanne Walker-Grant  
Tribal Chairperson  
Table Mountain Rancheria



Ruben Barrios  
Tribal Chairman  
Santa Rosa Rancheria Tachi Tribe



Neil Peyron  
Tribal Chairman  
Tule River Tribe